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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/773,706	02/06/2004	Anthony C. Nicholls	ABLE-0024	8306
7590 Jane Massey Licata Licata & Tyrrell P.C. 66 E. Main Street Marlton, NJ 08053				
07/17/2008				
EXAMINER				
MENDEZ, MANUEL A				
ART UNIT		PAPER NUMBER		
3763				
MAIL DATE		DELIVERY MODE		
07/17/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/773,706

Applicant(s)

NICHOLLS, ANTHONY C.

Examiner

Manuel A. Mendez

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 April 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 1-34 and 45-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35-44 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of claims 35-44 in the reply filed on 04/18/2008 is acknowledged. The traversal is on the ground(s) that (1) Groups I and III relate to brush wherein the ratio of the head diameter to the widest cross-sectional internal dimension of the catheter lumen is greater than 1.0 and that (2) the examination of Groups I and II would not be a serious burden on the examiner. These arguments are not found persuasive because in addition to the limitation indicating that the widest cross-sectional internal dimension of the catheter lumen is greater than 1.0, Group I discloses a combination comprising of a plurality of brushes of varying head diameters, and additionally, the step of selecting a brush from said plurality of brushes. These additional claim elements create a serious burden on the examiner since it requires a different search and additional time to interpret different claim limitations. Based on the above cited differences, the requirement in question is considered to be proper, and therefore is made FINAL.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 35 recites the limitation "the catheter lumen" in line 7. There is insufficient antecedent basis for this limitation in the claim. Please note that the brush is a subcombination and the phrase "catheter lumen" is not positively disclosed in the claim. Therefore, any reference to this phrase would lack antecedent basis.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 35-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox et al. (US 5297310), LaLonde (US5253386), and/or Poje et al. (US 5168593). In view of the above 112 rejection, the examiner notes for the record that all the cited references disclose a brush having a head of bristles and wherein the bristles have substantially the same length along the brush head's length. For details, please refer to figure 1, item 20, in the Cox et al. patent, figure 1, item 20, in the LaLonde patent, and figure 1, item 12, in the Poje et al. patent.

In relation to the ratio of the head diameter, in this particular case, the ratio is a comparison between the head diameter of the brush and the widest cross-sectional internal dimension of the catheter lumen. However, since the claim does not positively disclose a catheter having a catheter lumen, any reference to "the catheter lumen" lacks antecedent basis, making the claims in question vague. Moreover, any person of ordinary skill in the art would have recognized that the larger the head diameter of the brush in relation to the diameter of the catheter lumen, the more "cleaning pressure" the brush would have exerted on the internal walls of the catheter. Therefore, for said person of ordinary skill in the art, modifying the head diameter to vary the removal capabilities of the brush, would have been considered obvious.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manuel A. Mendez whose telephone number is 571-272-4962. The examiner can normally be reached on 0730-1800 hrs.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Nicholas D. Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Manuel A. Mendez/

Primary Examiner, Art Unit 3763

Manuel A. Mendez
Primary Examiner
Art Unit 3763

MM

